

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NICOLETTE CREMEANS, <i>et al.</i>,	:	
	:	
Plaintiffs,	:	Case No. 2:19-cv-2703
	:	
v.	:	Chief Judge Algenon L. Marbley
	:	
SAMANTHA TACZAK, <i>et al.</i>,	:	Magistrate Judge Elizabeth P. Deavers
	:	
Defendants.	:	

ORDER


On September 1, 2022, Plaintiff filed a Motion for Reconsideration requesting that the Court revisit its denials of Plaintiff’s Motion for Summary Judgment, Plaintiff’s Motion to Compel, and Plaintiff’s Motion to Strike in its order issued on August 17, 2022. (ECF No. 133). This Court had already received a Notice of Appeal, however, concerning the same Order from Defendants City of Chillicothe, Samantha Taczak, and Keith Washburn on August 29, 2022. (ECF No. 135). The appeal relates to the Court’s prior Order, granting in part and denying in part Defendants’ Motion for Summary Judgment. *Id.* In this Court’s September 6, 2022 Order, the Court held this matter in abeyance pending the resolution of the outcome of said appeal. (ECF No. 138).

On September 12, 2022, Defendants filed a motion seeking to move the Court to vacate the dates set in its Scheduling Order and stay this matter. (ECF No. 139). Plaintiffs filed a motion in opposition, asking the Court to certify Defendants’ appeal as frivolous given that they could have raised the issue of “qualified immunity” in their first interlocutory appeal. (ECF No. 140). Plaintiffs are asking this court to, in effect, dismiss the notice of appeal. But in *Dickerson v. McClellan*, the Sixth Circuit explicitly held that district courts have no authority to dismiss a

notice of appeal from the denial of a motion for summary judgment on grounds of qualified immunity. 37 F.3d 251, 252 (6th Cir. 1994). Therefore, “the decision to dismiss a notice of appeal rests with [the Sixth Circuit], not the district court.” *Id.*; see *Offineer v. Kelly*, No. C2-09-CV-493, 2011 WL 736397, at *2 (S.D. Ohio Feb. 23, 2011) (Marbley, J.) (“Any decision on the frivolity of the Defendants' appeal is for the Sixth Circuit alone to decide.”).!

As a result of the Defendants’ appeal, the Defendants’ motion is **GRANTED** and this case is hereby **STAYED** before this Court. This Court’s Order Setting Trial Date and Settlement Conference, (ECF No. 134), is hereby **VACATED**.

IT IS SO ORDERED.



ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

Dated: September 13, 2022